

(1) (2) After a review of the preliminary hearing record, the Appeals Board finds that the Administrative Law Judge's denial of claimant's request for preliminary hearing benefits was based on a finding that claimant suffered an intervening nonwork-related accident on January 12, 1997. Therefore, the Appeals Board finds it has jurisdiction to review this preliminary hearing Order because the issue raised is whether or not claimant's need for medical treatment and temporary total disability compensation is the result of an accidental injury that arose out of and in the course of employment. This is an issue listed in K.S.A. 44-534a, as amended, that grants the Appeals Board jurisdiction to review a preliminary hearing order.

While working for respondent on October 24, 1996, claimant suffered a fall that resulted in bilateral wrist fractures. These fractures were surgically repaired at the Overland Park Regional Medical Center by Jeffrey T. MacMillan, M.D. on the day of the accident. The respondent provided medical treatment and paid claimant temporary total disability benefits up through March 13, 1997.

Claimant sustained a nonwork-related accident when he slipped and fell on the ice on January 12, 1997, as he was walking from church to his truck. The fall caused a refracture of his left wrist, which was surgically repaired by Dr. MacMillan on January 14, 1997. Thereafter, claimant requested payment of medical treatment expenses, ongoing medical treatment, and temporary total disability compensation for this refractured left wrist. The Administrative Law Judge, after hearing the testimony of claimant and reviewing the medical records, denied claimant's request for preliminary hearing benefits. The Administrative Law Judge's Order did not give a reason for the denial. Following the receipt of the Administrative Law Judge's Order, claimant's attorney requested the Administrative Law Judge to provide the basis for the denial of claimant's request for preliminary benefits. The Appeals Board has reviewed the complete file and finds no response from the Administrative Law Judge to claimant's request.

The Appeals Board is required to review all final orders, awards or preliminary hearing awards of an administrative law judge if a written request is filed by one of the parties within ten days. See K.S.A. 44-551(b)(1), as amended. Preliminary hearing awards are reviewed by the Appeals Board if a party alleges the administrative law judge exceeded his jurisdiction or if one of the issues listed in K.S.A. 44-534a, as amended, is disputed. When the administrative law judge does not state the basis for the denial of a preliminary hearing benefit request, the parties or the Appeals Board must guess as to such basis or remand the preliminary hearing order to the administrative law judge for such a finding.

In this case, the Appeals Board finds that the Administrative Law Judge denied claimant's request for preliminary hearing benefits on the basis that claimant's fall that occurred on January 12, 1997, was an intervening accident which caused claimant to refracture his left wrist. Claimant, although he did not file a brief, presumably argues that

claimant's refractured wrist was a direct and natural consequence of the original work-related injury. Thus, claimant's left wrist refractured because the original injury had not yet healed.

The Appeals Board finds, for preliminary hearing purposes, that the preliminary hearing Order of Administrative Law Judge Steven J. Howard denying claimant's request for preliminary benefits should be affirmed. The Appeals Board finds that claimant suffered a distinct and separate traumatic fall that refractured his left wrist on January 12, 1997, and, therefore, the injury was not a direct and natural consequence of the original work-related injury suffered by claimant on October 24, 1996.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the preliminary hearing Order by Administrative Law Judge Steven J. Howard, dated May 27, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Gregory D. Worth, Lenexa, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director